



## PLANNING COMMISSION STAFF REPORT

<b>File No.</b>	<b>GP15-017</b>
<b>Applicant:</b>	<b>Brian Kientz</b>
<b>Location</b>	<b>0 Piercy Road</b>
<b>Existing General Plan Land Use</b>	<b>Lower Hillside</b>
<b>Proposed General Plan Land Use</b>	<b>Residential Neighborhood</b>
<b>Existing Zoning</b>	<b>NA-Unincorporated</b>
<b>Council District</b>	<b>2</b>
<b>Historic Resource</b>	<b>No</b>
<b>Annexation Date:</b>	<b>Unincorporated</b>
<b>CEQA:</b>	<b>Statutory Exemption</b>

### APPLICATION SUMMARY:

Amendment to the Envision San José 2040 General Plan to expand the Urban Service Area boundary and change the Land Use/Transportation Diagram land use from Lower Hillside to Residential Neighborhood on a 3.2 gross acre site.

### RECOMMENDATION:

Planning staff recommends that the Planning Commission make a recommendation to the City Council to **deny** the General Plan Amendment request to expand the Urban Service Area Boundary and change to the Land Use/Transportation Diagram designation of the subject site from Lower Hillside to Residential Neighborhood.

### PROJECT DATA

GENERAL PLAN CONSISTENCY			
General Plan Designation		Lower Hillside <input type="checkbox"/> Consistent <input checked="" type="checkbox"/> Inconsistent	
Consistent Policies		Residential Neighborhoods Policy LU-11.6; Efficient Use of Residential and Mixed-Use Lands Policy LU-10.5	
Inconsistent Policies		Focused Growth Major Strategy; Life Amidst Abundant Natural Resources Major Strategy; Industrial Preservation Policy LU-6.2; and Fiscally Sustainability Policies: FS-3.8	
SURROUNDING USES			
	General Plan Land Use	Zoning	Existing Use
North	Industrial Park	Unincorporated	Horse Stables and Out-Buildings
South	Residential Neighborhood	Residential Neighborhood	Single-Family Residence
East	Open Hillside	Unincorporated	Grassland Hillside and Horse Stable
West	Industrial Park	Industrial Park	Vacant

RELATED APPROVALS	
Date	Action
12/2/08	Urban Growth Boundary (File No. UGB06-001) modification to the Urban Growth Boundary to include approximately 3.2 acres within the Urban Growth Boundary on a property located generally at the northeasterly quadrant of the intersection of Piercy Road and Silicon Valley Road.

## PROJECT DESCRIPTION

The applicant, Brian Kientz, applied for a General Plan Amendment on December 16, 2015, proposing to expand the Urban Service Area boundary and the General Plan Land Use/Transportation Diagram land use designation from Lower Hillside to Residential Neighborhood on a 3.2 gross acre subject site. Pursuant to the information contained in the application, the land use change would facilitate the development of low density single-family residences.

### Site Location

The site is located on the northwest corner of Piercy Road and Tennant Road, and is currently vacant open hillside. To the north are large-lot single-family homes and an assortment of horse stables and out-buildings. To the east of the site is the Evergreen Canal, an abandoned man-made channel that once conveyed water from Coyote Creek to Thompson Creek and Silver Creek. Across Piercy Road to the west are undeveloped lands designated for Industrial Park uses in the New Edenvale Employment Growth Area. To the south is an existing single-family subdivision (4.8 dwelling units per acre) designated Residential Neighborhood. All parcels adjacent to the site are located within the Urban Service Area (USA). In Figure 1 below, the site is shown in red hash marks, the Urban Growth Boundary (UGB) represented by the green line, and the Urban Service Area is represented by the blue line.

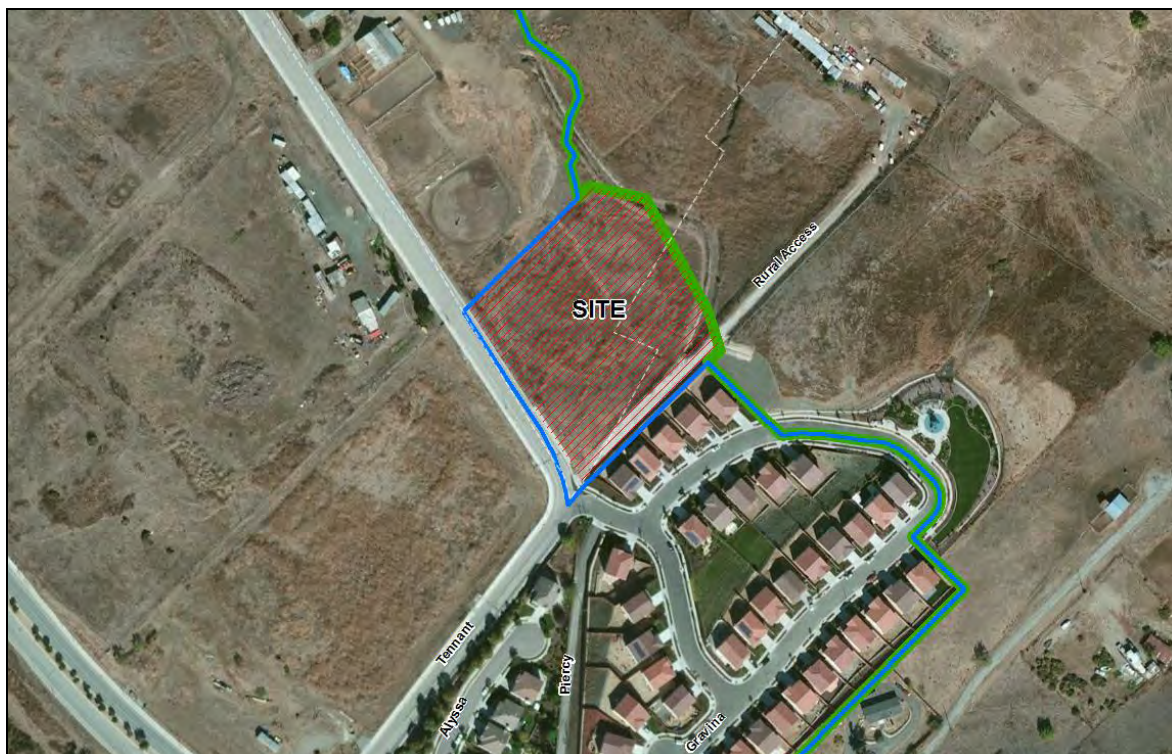


Figure 1: Site Location

## Background

Until 1983, the subject site and the adjacent hillside area east of Piercy Road were designated Non-Urban Hillside consistent with previous General Plan (San Jose 2020 General Plan) land use policies for rural hillsides with potential geologic hazards. The area west of Piercy Road (directly across from the site) was designated for Industrial Park development with the adoption of General Plan 1975 (GP'75).

In 1983, as part of an economic development strategy to encourage job growth in the Edenvale area, the City Council amended the General Plan to designate several areas in South Edenvale for future industrial development. One of the locations identified by the City Council included an area immediately south of the subject site, and it was brought into the Urban Growth Boundary/Urban Service Area with a land use designation of Campus Industrial.

In 1991, the City Council approved a privately initiated General Plan amendment proposal to designate part of the Campus Industrial area to Medium High Density Residential (8-16 dwelling units per acre). The City Council approval led to the development of the Creekside/Basking Ridge residential community that is located south of the subject site (This development is shown in Figure 1). Tennant Avenue was established as the northern boundary for the residential area.

In 1997, the City Council considered a General Plan amendment proposal (GP97-2-1) that included the conversion of a nine-acre site immediately north of the subject site from Rural Residential and Non-Urban Hillside to Medium High Density Residential (8-16 dwelling units per acre). The application also included modification of the Urban Growth Boundary and Urban Service Area. The City Council noted that the inherent incompatibility between residential and planned industrial park uses was a critical concern. The Council approved the modification of the Urban Service Area and approved a land use designation change to Industrial Park as an alternative to the request for Medium High Density Residential.

A General Plan Amendment request (GP06-02-02) was submitted in 2006 to change the subject site's Land Use/Transportation Diagram designation from Rural Residential (0.2 dwelling units per acre) to High Density Residential (25-50 dwelling units per acre), and to expand the Urban Service Area and Greenline/Urban Growth boundaries to include the subject site within the Urban Service Area and Urban Growth Boundary. Consistent with staff's recommendation, City Council approved the modification of the Urban Growth Boundary to include the subject site, and denied the land use designation change and USA expansion. Staff's analysis concluded that the site could potentially be suitable for urban development in the future and the proposed Urban Growth Boundary expansion was consistent with applicable General Plan 2020 policies at the time. However, development of the site, including expansion of urban services, was not appropriate within the timeline of the San Jose 2020 General Plan (See Attachment B).

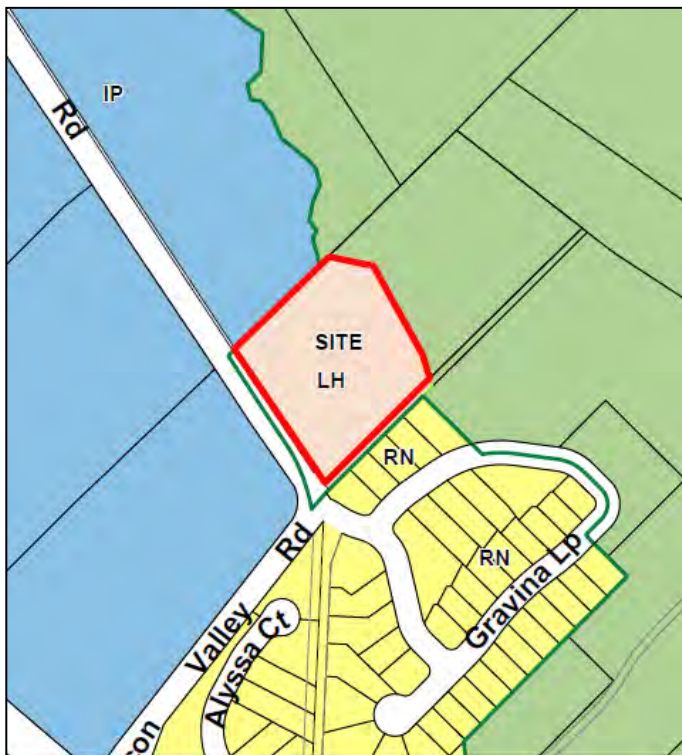
The current General Plan amendment submitted by the applicant is to expand the Urban Service Area to include the subject site and change the site's land use designation from Lower Hillside to Residential Neighborhood. San Jose's Urban Service Area boundary defines the areas where services and facilities provided by the City and other public agencies are generally available, and where urban development requiring such services should be located. Since the last General Plan Amendment request (GP06-02-02), the City Council has adopted the Envision San Jose 2040 General Plan. Staff has analyzed the proposed General Plan Amendment request against the current major strategies, goals, and policies of the Envision San Jose 2040 General Plan, as detailed below in the Analysis section of the Staff Report.

## Early Consideration

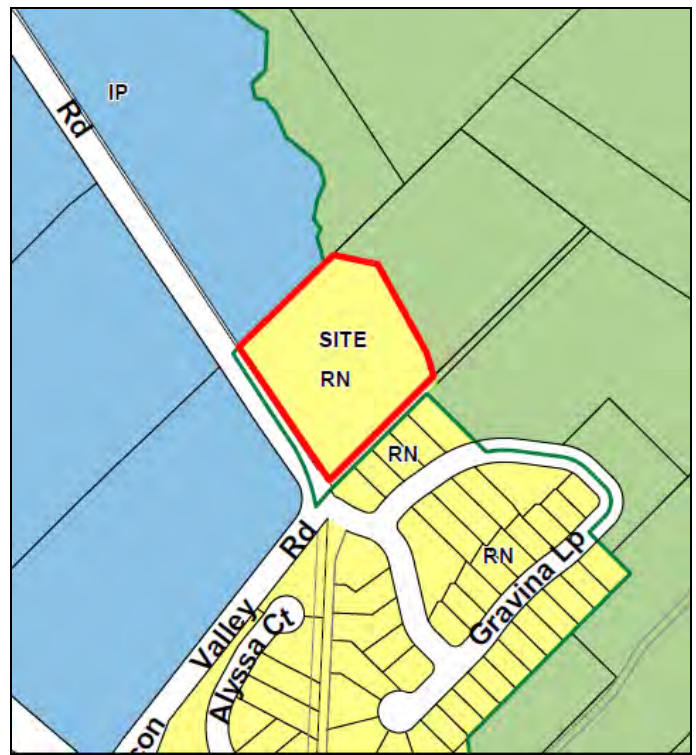
The proposed General Plan Amendment is requesting a modification of the Urban Service Area boundary to include the subject site and a land use change from Lower Hillside to Residential Neighborhood on a 3.2 gross acre site. As this request is promoting growth in non-urban areas and expanding requirements for services outside the Urban Service Area, this amendment is subject to the Early Consideration hearing process. The Early Consideration process is utilized when a proposed land use amendment to the Envision San José 2040 General Plan is fundamentally inconsistent with the major strategies, goals and policies of the General Plan. The Administration brings the amendment to the Planning Commission for Early Consideration of a recommendation to the City Council for either denial or continued processing during the General Plan Annual Review.

## ANALYSIS

**Figure 2: Existing General Plan Designation**



**Figure 3: Proposed General Plan Designation**



The existing General Plan land use designation of the site is *Lower Hillside*. This designation is applied to properties at the edge of the developed City, just inside its Urban Growth Boundary and at the limit of the Urban Service Area, but where urbanization has already partially occurred and where urban infrastructure and services (streets, utilities, etc.) are already available. This designation is applied to properties located downhill from the Urban Growth Boundary, but that typically have hillside characteristics and which typically have a higher cost for the provision of public services. Development of Lower Hillside properties is not intended to expand the City or create new areas of development, but rather to allow limited infill that completes the existing pattern of development at its edge. New residential development is limited to one dwelling unit per existing lot, with new subdivisions not to exceed one dwelling unit per five acres.



The proposed General Plan land use designation is *Residential Neighborhood*. This designation is applied broadly throughout the City to encompass most of the established, single-family residential neighborhoods, including both the suburban and traditional residential neighborhood areas which comprise the majority of its developed land. The intent of this designation is to preserve the existing character of these neighborhoods and to strictly limit new development to infill projects which closely conform to the prevailing existing neighborhood character as defined by density, lot size and shape, massing and neighborhood form and pattern. New infill development should improve and/or enhance existing neighborhood conditions by completing the existing neighborhood pattern and bringing infill properties into general conformance with the quality and character of the surrounding neighborhood. New infill development should be integrated into the existing neighborhood pattern, continuing and, where applicable, extending or completing the existing street network. The average lot size, orientation, and form of new structures for any new infill development must therefore generally match the typical lot size and building form of any adjacent development, with particular emphasis given to maintaining consistency with other development that fronts onto a public street to be shared by the proposed new project.

Staff analysis determined that the existing Lower Hillside designation and level of development on the site is appropriate and advances the policies of the General Plan to maintain open space and limit development past the Urban Service Area. The Residential Neighborhood designation would allow the subdivision of the site up to eight dwelling units per acre and require additional public services and have net negative impact on the fiscal sustainability of the City.

### **General Plan Major Strategies, Goals, and Policies**

The proposed amendment was analyzed with respect to conformance with the major strategies, goals, and policies of the Envision San Jose 2040 General Plan. Staff finds the proposed expansion of the Urban Service Area and requested change in land use designation to be fundamentally inconsistent with the General Plan. The following is a complete analysis of major strategies, goals, and policies of the General Plan.

The proposed project would be consistent with the following General Plan policies:

- 1. Residential Neighborhoods Policy LU-11.6:** For new infill development, match the typical lot size and building form of any adjacent development, with particular emphasis given to maintaining consistency with other development that fronts onto a public street to be shared by the proposed new project. As an exception, for parcels already developed with more than one dwelling unit, new development may include up to the same number of dwelling units as the existing condition. The form of such new development should be compatible with and, to the degree feasible, consistent with the form of the surrounding neighborhood pattern.

*Analysis: The proposed project is only partially consistent with the above policy. While the site is adjacent to a single-family residential subdivision to the south (Creekside/Basking Ridge residential community), lands directly to the north, east, and west of the site are currently vacant, and largely rural in character with a General Plan land use designations of Industrial Park. Overall, the proposed project is primarily inconsistent with existing and planned development in the area and the intent of this policy.*

- 2. Efficient Use of Residential and Mixed-Use Lands Policy LU-10.5:** Facilitate the development of housing close to jobs to provide residents with the opportunity to live and work in the same community.

*Analysis: The subject project site is located adjacent to the New Edenvale Employment Lands Growth Area, which is an identified area for future job growth in the Envision San Jose 2040 General Plan.*

The proposed project would be inconsistent with the following General Plan major strategies, goals, and policies:

1. **Focused Growth Major Strategy:** A major strategy of the Envision San Jose 2040 General Plan is to focus new growth capacity in specifically identified “Growth Areas” (Urban Villages, Specific Plan areas, Employment Areas, Downtown) while the majority of the City is not planned for additional growth or intensification. The Major Strategy also strictly limits new residential development through neighborhood infill outside of these Growth Areas to preserve and enhance the quality of established neighborhoods and reduce environmental and fiscal impacts.

*Analysis: The Focused Growth Major Strategy promotes development in identified Growth Areas and limits new residential development outside of those areas. The proposed modification to the Urban Service Area boundary and land use change directly conflicts with the Focused Growth Major Strategy by allowing residential uses on the edge of the City and outside of the focused growth areas. Because most basic neighborhood services such as parks, public transit facilities, neighborhood-serving commercial and others are very limited in the vicinity, future residents would need to rely almost exclusively on automobile travel to reach most basic neighborhood services. The extension of City services to this site would also incur higher fiscal impacts to the City. Furthermore, the proposed General Plan Amendment would locate residential development closer to areas that have been designated and planned for industrial uses, potentially limiting future industrial development adjacent to the subject site.*

2. **Life Amidst Abundant Natural Resources Major Strategy:** The Life Amidst Abundant Natural Resources Major Strategy defines the Greenline/Urban Growth Boundary as the ultimate perimeter of urbanization in San Jose, and states that urban development should occur only within the Urban Service Area where it can safely and reasonably be accommodated and where urban services can efficiently be provided.

*Analysis: The General Plan Amendment request proposes to expand the Urban Service Area to facilitate the development of residential uses on the periphery of the City. Provision of urban services for residents in this location would not be as efficient as compared to the provision of services in specified Growth Areas.*

3. **Industrial Preservation Policy LU-6.2:** Prohibit encroachment of incompatible uses into industrial lands, and prohibit non-industrial uses which would result in the imposition of additional operational restrictions and/or mitigation requirements on industrial users due to land use incompatibility issues.

*Analysis: Lands directly to the north and west of the subject site have a General Plan land use designation of Industrial Park (see Figure 2). Locating additional residential uses adjacent to industrial park uses at the proposed location could restrain future employment uses in the New Edenvale Employment Area.*

4. **Fiscally Sustainable Land Use Policy FS-3.8:** Maintain the City’s current Urban Service Area boundaries. Expansion of the Urban Service Area should only be considered when necessary to provide services to existing development in need of urban services and when such expansions are consistent with LAFCO rules. Coordinate with the County to prevent future Urban Service needs beyond the current USA boundaries.

*Analysis: The proposed General Plan Amendment request is inconsistent and in direct conflict with the above policy. Policy FS-3.8 states that the Urban Service Area expansions should only be considered when necessary to provide services to existing development. The subject site is rural in character, has no existing development, and is located on the periphery of the City outside of the Urban Service Area (see Figure 1).*

## CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)


Under the provisions of Section 15270 of the State Guidelines for Implementation of the California Environmental Quality Act, the General Plan Amendment is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended (CEQA), if the public agency disapproves of the project. Section 15270 allows for an initial screening of projects on the merits for quick disapprovals prior to the initiation of the CEQA process where the agency can determine that the project cannot be approved. This section shall not relieve an applicant from paying the costs for an EIR or Negative Declaration prepared for his project prior to the Lead Agency's disapproval of the project after normal evaluation and processing.

## PUBLIC HEARING NOTIFICATION

- ☐ **Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater.  
**(Required: Website Posting)**
- ☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the criteria above, staff followed Council Policy 6-30: Public Outreach Policy. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

**Project Manager:** John Tu

**Approved by:**  , Planning Official for Harry Freitas, Planning Director

**Date:** 4/26/16

### Attachments:

- A) Letter from Applicant
- B) Planning Commission to City Council Memo and Planning Commission Staff Report for GP06-02-02/UGB06-001
- C) Public Correspondence

Owner:	Applicant:
James McDonald & Steve Szehring 1150 West San Carlos Street San Jose, CA 95126	Republic Urban Properties 84 West San Carlos Street, Suite 600 San Jose, CA 95113

The Cyril G. Barbaccia and Lena M. Barbaccia Revocable Trust  
950 South Bascom Ave, Suite 1113  
San Jose, California 95128

Jason R. Rogers  
Division Manager  
Planning, Building and Code Enforcement, Planning Division  
200 East Santa Clara Street, 3<sup>rd</sup> Floor  
San Jose, California 95113

February 9, 2016

Re: GP15-017, APN 678-13-012

Dear Mr. Rogers,

The City of San Jose's proposed denial of the Cyril G. Barbaccia and Lena M. Barbaccia, Trustees of the Cyril G. Barbaccia and Lena M. Barbaccia Revocable Inter Vivos Trust dated November 16, 1982, parcel (APN 678-13-012) (**Subject Parcel**) GP 15-017 application for a general plan land use change and inclusion in the Urban Service Area using its General Plan annual early consideration procedure ignores both existing General Plan policies, prior precedents and relevant existing site and immediate environs conditions. A careful, and unbiased, review indicates just the **opposite** of the city's staff denial decision and instead supports the application's eligibility for **approval** (or at the least, **continued processing**) under the General Plan's early consideration process.

The facts are as follows.

**The Subject Parcel is Singled out as Exception from Adjoining Properties**

The General Plan states:

Urban Service Area. San José's Urban Service Area boundary defines the areas where services and facilities provided by the City and other public agencies are generally available, and where urban development requiring such services should be located. In many locations, the Urban Service Area boundary and the Urban Growth Boundary are coterminous; *a notable exception is that Urban Reserves are located outside the Urban Service Area (Italics added).*



The **Subject Parcel** is a notable exception to this policy. Immediately adjoining parcels, each which front on Piercy Road, are included in the USA. Citywide review of locations where the UGB and USA are not co-terminus reveals as well the **Subject Parcel** is an exception where the single 3.2 acre **Parcel** is within the UGB but excluded from the USA, despite the findings of the certified negative declaration prepared for the prior **Subject Parcel** application that any impact on public services or utilities would have "less than significant impact".

The exceptions applied to the **Subject Parcel** apply as well as to land use policy. The immediately adjoining Aegis single-family housing development (which required both UGB, USA and land use changes to the General Plan) was approved, concurrent in time with rejection of the **Parcel's** prior land use and USA change request, and built at a density equivalent to that permitted by the GP Residential Neighborhood density (maximum of 8 units per acre) now being requested by the owner. Despite similar slope, geology and public service and utility conditions the 3.2-acre **Subject Parcel** remains designated at the unattainable density of 1 unit per five acres.

The **Subject Parcel** meets all of the General plan criteria set forth for Neighborhood Residential General Plan land use. The GP applicable policy states:

" The intent of this designation is to preserve the existing character of these neighborhoods and to strictly limit new development to infill projects which closely conform to the prevailing existing neighborhood character as defined by density, lot size and shape, massing and neighborhood form and pattern. New infill development should improve and/or enhance existing neighborhood conditions by completing the existing neighborhood pattern and bringing infill properties into general conformance with the quality and character of the surrounding neighborhood."

One can array numerous policies in the GP that both support and oppose the requested General Plan and Urban Service Area amendments, but the suitability of the **Subject Parcel** is all too evident. Required public services and utilities are readily available and adequate, access to local and regional transportation is excellent with freeway accessibility within 90 seconds and light rail and CalTrain service within short driving and biking distance. The gentle sloping land with grades of 15 percent or less is ideal for well-designed and sited single-family homes.

Finally, the city staff's recommended denial of the CGB application using the GP annual review early consideration procedure in April would preempt CGB's ability and right to pursue the desired GP changes using the city's normal GP amendment procedures.

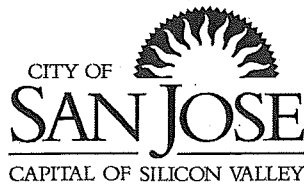
Given substantial or total diminishing of the economic value of the **Parcel**, coupled with the contrasting and unequal treatment with adjoining and similar properties, the staff's stated intent to summarily dismiss the owner's application denies the applicant a full hearing on the evidence supporting the requested change. This application asks for equal treatment with the adjoining development on the south to which it has the very same characteristics.

Sincerely,

A handwritten signature in black ink, appearing to read "Bryan Kientz", with a stylized, flowing script.

Bryan Kientz  
Project Manager

Cc: Jack Previte  
Norm Matteoni  
Tom Cooke  
Leslie Xavier – Planning  
John Tu – Planning  
Jared Hart - Planning



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Planning Commission

**SUBJECT:** SEE BELOW

**DATE:** April 28, 2008

**COUNCIL DISTRICT:** 2

**SNI AREA:** N/A

**SUBJECT: UGB06-001/GP06-02-02. REQUEST TO: 1) MODIFY THE GREENLINE/URBAN GROWTH BOUNDARY (UGB) TO INCLUDE APPROXIMATELY 3.2 ACRES OF UNINCORPORATED TERRITORY (FILE NO. UGB06-001); AND 2) AMEND THE GENERAL PLAN LAND USE/TRANSPORTATION DIAGRAM TO CHANGE THE GENERAL PLAN LAND USE DESIGNATION FROM RURAL RESIDENTIAL (0.2 DWELLING UNITS PER ACRE) TO HIGH DENSITY RESIDENTIAL (25-50 DWELLING UNITS PER ACRE) AND EXPAND THE URBAN SERVICE AREA (USA) TO INCLUDE THE APPROXIMATELY 3.2-ACRE SITE (FILE NO. GP06-02-02) LOCATED AT THE NORTHEASTERLY QUADRANT OF PIERCY ROAD AND SILICON VALLEY ROAD.**

## **RECOMMENDATION**

The Planning Commission voted 4-1-2, Commissioner Kinman opposed, Commissioners Campos and Zito absent, to recommend approval of the minor modification of the Greenline/Urban Growth Boundary (UGB) to include approximately 3.2 acres of unincorporated territory located at the northeasterly quadrant of Piercy Road and Silicon Valley Road. The Planning Commission also voted 5-0-2, Commissioners Campos and Zito absent, to recommend denial of the General Plan amendment request to change the Land Use/Transportation diagram designation from Rural Residential (0.2 dwelling units per acre (du/ac)) to High Density Residential (25-50 du/ac) and to expand the Urban Service Area (USA) to include the subject 3.2-acre site.

## **OUTCOME**

Should the City Council approve the UGB minor modification and deny the General Plan amendment and USA expansion as recommended by the Planning Commission, the UGB would be modified to include the subject site, but the site would remain outside of the USA under a non-urban land use designation of Rural Residential (0.2 du/ac).

## **BACKGROUND**

On March 27, 2006, the applicant, Barbaccia Investments, requested a General Plan amendment request (File No. GP06-02-02) to change the San José 2020 General Plan land use designation from Rural Residential (0.2 du/ac) to High Density Residential (25-50 du/ac) and expansion of the USA

April 28, 2008

Subject: UGB06-001/GP06-02-02

Page 2

boundary to include a 3.2-acre site located in unincorporated territory on Piercy Road. The proposal requires a minor modification of the UGB (File No. UGB06-001).

The vicinity of the site is primarily characterized by undeveloped grasslands and horse pastures. The subject site is currently designated Rural Residential (0.2 DU/AC) and is intended for single-family development on lots at least five acres in size. Land use designations limiting development to less than one dwelling unit per acre are considered non-urban in the General Plan. Non-urban land use designations are typically applied to hillside areas located outside of the UGB and USA to preserve open space and to avoid development issues associated with geologic hazards.

The UGB defines the ultimate limit of urbanization in the City by setting clear boundaries to urban development intended in the General Plan. The USA directs urban development to those areas where municipal services and facilities can be provided in an efficient and orderly manner. Together the UGB and USA govern when and where development should occur, including the extension of urban services, so that the City can maximize efficiencies in providing services to residents.

### ANALYSIS

On April 21, 2008, the Planning Commission held a public hearing to consider the subject UGB modification, General Plan amendment and USA expansion. The Director of Planning recommended denial of the General Plan amendment and USA expansion, but recommended approval of the minor modification of the UGB only because the site characteristics meet the criteria for a UGB minor modifications as set forth in Title 18 of the Municipal Code.

### Public Testimony

Tom Cooke, representing Barbaccia Investments, presented the applicant's proposal. Mr. Cooke stated that the site is surrounded by sites located within the UGB and USA and that the site is less than one mile from the freeway, 7.5 miles from downtown, and approximately one mile from regional transit. He stated that the site is suitable for multi-family development because it allows future development on the site to be terraced to preserve views while maintaining ample open space. Mr. Cooke suggested that the proposal is consistent with General Plan policies for housing development and diversification of housing types in the City. He also stated that multi-family housing on the site will help the City meet its housing goals and contribute to a good jobs/housing balance.

Joanie Morgado, resident of the single-family residential neighborhood to the south of the site, expressed strong opposition to the applicant's proposal for high density housing development. She expressed concerns about the domino effect that the proposal would have on future development of other sites in the vicinity and the cumulative effect on traffic congestion in the area. Ms. Morgado also stated that high-density condominium development is incompatible with the surrounding character and the existing single-family neighborhood on Basking Ridge Avenue.

### Planning Commission Discussion

Chair Kalra asked whether the subject site is intended to be a buffer between the existing single-family residential neighborhood to the south and the industrial park uses planned to the north. Staff responded that high-density residential uses adjacent to industrial park uses can potentially be



compatible, but that some industrial park uses may be constrained if residential is adjacent. Staff explained further that high density residential is inappropriate on the subject site because of the geological risks, and location on the urban fringe, with rural and pastoral uses to the north.

In response to a request for clarification from the Planning Commission, staff explained that the U.S. Fish and Wildlife Service correspondence, dated July 7, 2006, is related to analysis of the future development on the site and its potential impact on wildlife movement between the hillsides and Coyote Creek. Staff indicated that the project does not have a significant impact on wildlife movement given the ample open space in the vicinity.

In response to a request for clarification from the Planning Commission, staff explained that the existing infrastructure in the vicinity is funded by the owners of industrial-designated property through an assessment district. The infrastructure improvements do not contemplate development on the site, and future development on the site would require examining the project's fair-share contribution to the assessment district. Future development on the site at the density range proposed by the applicant would require upgrading and expanding existing infrastructure, which was only completed in recent years.

Commissioner Platten motioned to recommend approval of File No. UGB06-001, minor modification of the UGB, as recommended by staff. The Planning Commission debated the staff recommendation against the criteria for UGB minor modifications set forth in Title 18 of the Municipal Code. The City Attorney indicated that the Commission may make its own findings for an alternate recommendation to the City Council, and the Commission discussed the possibility for the City Council to deny the UGB minor modification. The Commission voted 4-1-2, Commissioner Kinman opposed and Commissioners Campos and Zito absent, to recommend approval of the minor modification of the UGB to include the subject site.

Commissioner Platten motioned to recommend denial of the General Plan amendment and expansion of the USA request. Chair Kalra cited environmental concerns and the need to buffer industrial park uses from the existing residential neighborhood as reasons why he supports the staff recommendation to deny the proposal. The Planning Commission voted 5-0-2, Commissioners Campos and Zito absent, to recommend denial of the General Plan amendment and expansion of the USA.

### **EVALUATION AND FOLLOW-UP**

Not applicable.

### **POLICY ALTERNATIVES**

**Alternative 1.** Deny the UGB minor modification, General Plan amendment and USA expansion request.

**Pros:** Denial of the proposed UGB minor modification, General Plan amendment and the USA expansion is consistent with existing General Plan policies that discourage urban development on hillsides subject to geologic hazards.

**Cons:** None.

Reason for not recommending: Staff recommended approval of the applicant's UGB minor modification proposal because it qualifies for a UGB minor modification under the criteria set forth in Title 18 of the Municipal Code. However, the Council may deny the UGB minor modification by making findings supported by other goals and policies in the General Plan.

**Alternative 2.** Approve the UGB minor modification, General Plan amendment and the USA expansion request.

Pros: None.

Cons: Approval of the applicant's proposal would allow future residential development to occur at a density that is inappropriate for a non-urban hillside location with known geologic hazards. The proposal would result in development that is incompatible with the surrounding semi-rural character.

Reason for not recommending: The timing of urban development on a site located outside of the UGB/USA with geologic constraints is inappropriate given that housing opportunities exist in other areas of the City such as downtown and locations along transit corridors. The extension of City services to this site for higher density development would incur higher fiscal impacts to the City.

**Alternative 3.** Approve the UGB minor modification, USA expansion and change the General Plan land use designation on the site to an urban land use designation (defined as a density of one dwelling unit per acre or greater).

Pros: The subject site may be developed with a minimum of three dwelling units.

Cons: Due to identified geologic hazards on the subject site, approval of an urban land use designation is inappropriate given General Plan policies that discourage development in areas subject to geologic hazards.

Reason for not recommending: The existing Rural Residential (0.2 DU/AC) land use designation on the site is specifically intended for low-density rural uses that avoid issues associated with development in areas subject to potential geologic hazards.

#### **PUBLIC OUTREACH/INTEREST**

- ☐ **Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- ☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

April 28, 2008

Subject: UGB06-001/GP06-02-02

Page 5

Although this item does not meet any of the above criteria, staff followed the Council Public Outreach Policy and held a community meeting on March 10, 2008. Three residents from the nearby single-family neighborhood were present and they expressed concerns about neighborhood compatibility and the potential for future traffic impacts to their neighborhood. In addition to the community meeting, the proposal was presented at the Neighborhood Roundtable on February 12, 2008 and at the Developers Roundtable on February 15, 2008 for review and comment. The Housing and Community Development Commission also considered the proposal on April 10, 2008, and the Commission recommended denial of both the subject UGB minor modification and the General Plan amendment/USA expansion.

A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the site. A description of the proposed General Plan amendment, the public hearing notice and the staff report are posted on the Planning Division web page. The Notice of the Spring 2008 hearings on the General Plan was published in the San José Post-Record. No public comments were received regarding the proposed amendment, but the applicant submitted a response to the staff report at the Planning Commission meeting and that correspondence is attached. Staff has been available to respond to questions from the public.

### COORDINATION

This project was coordinated with the Public Works Department and the City Attorney's Office.

### FISCAL/POLICY ALIGNMENT

Not applicable.

### CEQA

A Negative Declaration adopted on April 21, 2008 provides environmental clearance for this proposal under CEQA. The Santa Clara County Parks and Recreation Department submitted a comment letter after the adoption of the Negative Declaration. The comment letter does not introduce any fair arguments for new significant impacts from the proposal and therefore does not necessitate a recirculation of the environmental document. The comment letter and staff response are attached.

  
For JOSEPH HORWEDEL, SECRETARY  
Planning Commission

For questions please contact Andrew Crabtree at 408-535-7893.

#### Attachments:

1. Applicant response to staff report, submitted April 21, 2008
2. Santa Clara County Parks and Recreation Department comment letter and staff response
3. Planning Commission staff report and attachments

## **STAFF REPORT**

### **PLANNING COMMISSION**

**FILE NO.:** UGB06-001/GP06-02-02**Submitted:** March 23, 2006**PROJECT DESCRIPTION:**

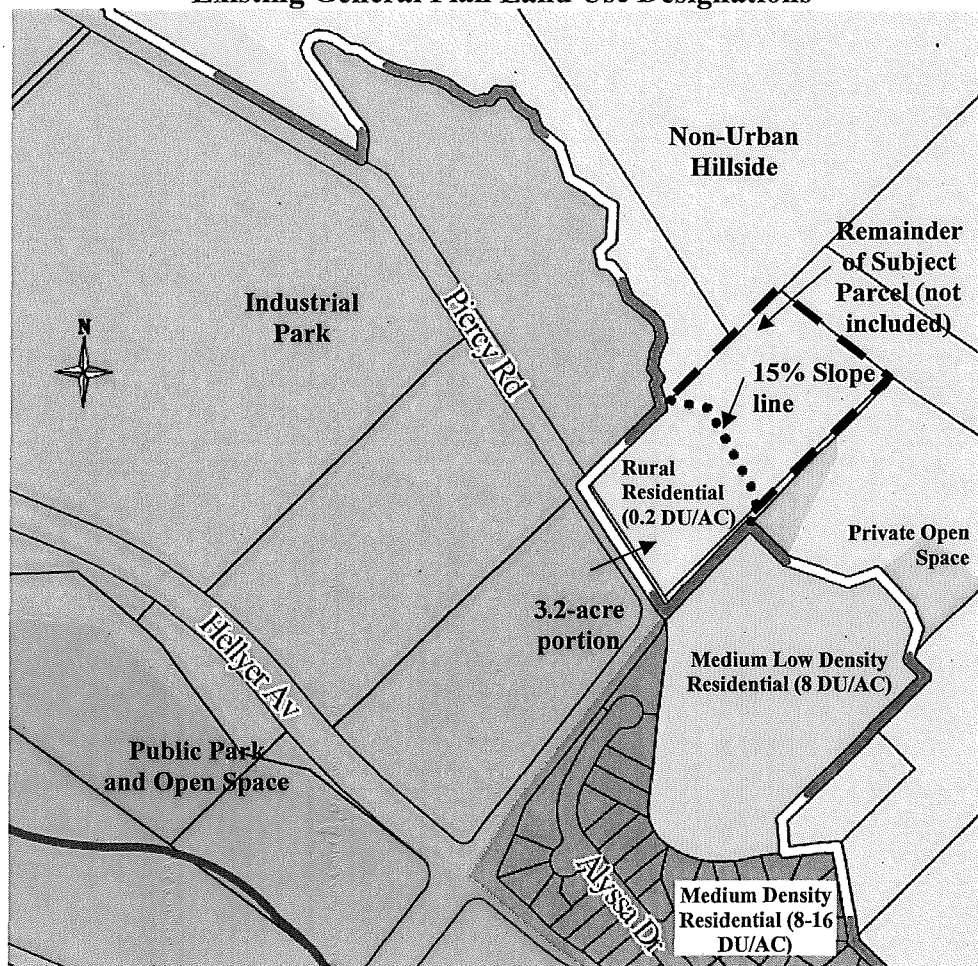
1. **File No. UGB06-001.** Proposal to modify the Greenline/Urban Growth Boundary (UGB) to include approximately 3.2 acres of unincorporated territory.

2. **File No. GP06-02-02.** General Plan amendment and Urban Service Area (USA) expansion request to change the General Plan land use designation from Rural Residential (0.2 dwelling units per acre) to High Density Residential (25-50 dwelling units per acre) on an approximately 3.2-acre site.

**LOCATION:** Northeasterly quadrant of the intersection of Piercy Road and Silicon Valley Road (formerly Tennant Avenue)

Existing General Plan	Rural Residential (0.2 DU/AC)
Proposed General Plan	High Density Residential (25-50 DU/AC)
Staff Recommendation	No Change to the General Plan
Zoning	Unincorporated
Council District	2
Annexation Date	N/A
SNI	N/A
Historic Resource	N/A
Redevelopment Area	Adjacent to Edenvale
Specific Plan	N/A
CEQA	Negative Declaration

**Existing General Plan Land Use Designations**





## **RECOMMENDATION**

Planning staff recommends that the Planning Commission recommend to the City Council:

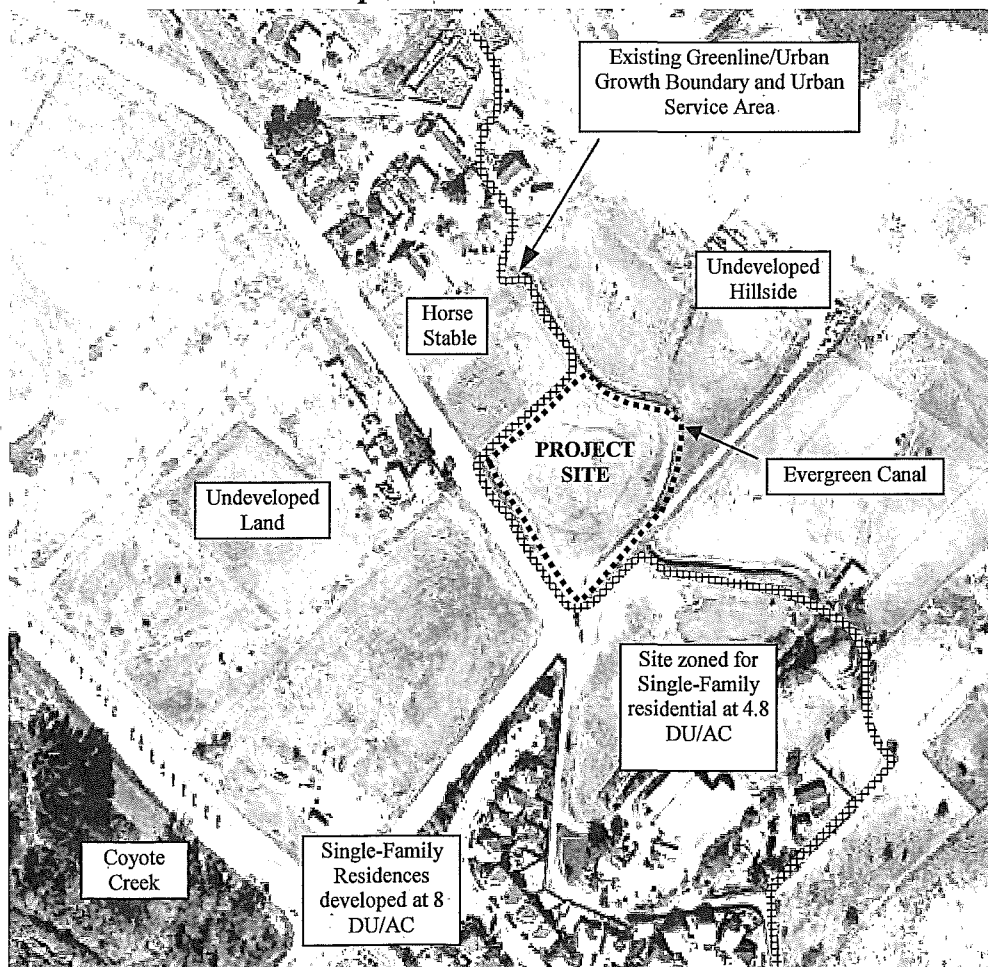
1. Approval of the proposal to modify the Greenline/Urban Growth Boundary (UGB) to include approximately 3.2 acres of unincorporated territory located at the northeasterly quadrant of the intersection of Piercy Road.
2. Denial of the General Plan amendment and request to change the General Plan land use designation from Rural Residential (0.2 dwelling units per acre (DU/AC)) to High Density Residential (25-50 DU/AC) on the 3.2-acre site.
3. Denial of the requested expansion of the Urban Service Area (USA) to include the 3.2-acre site.

Staff is recommending 1) approval of the Greenline/Urban Growth Boundary modification to include the subject site and, 2) denial of the General Plan amendment and USA expansion. Although the site may potentially be suitable for urban development in the future and the proposed UGB expansion is consistent with applicable policies, development of the site, including expansion of urban services, is not appropriate within the timeline of the San José 2020 General Plan.

## **BACKGROUND**

The subject request for a General Plan amendment and modification to the UGB involves a 5.8-acre parcel located in the east foothills of unincorporated Santa Clara County, at the eastern edge of the City's Edenvale planning area. The subject site is the western 3.2-acre portion of the 5.8-acre parcel that is located between Piercy Road and the abandoned Evergreen Canal.

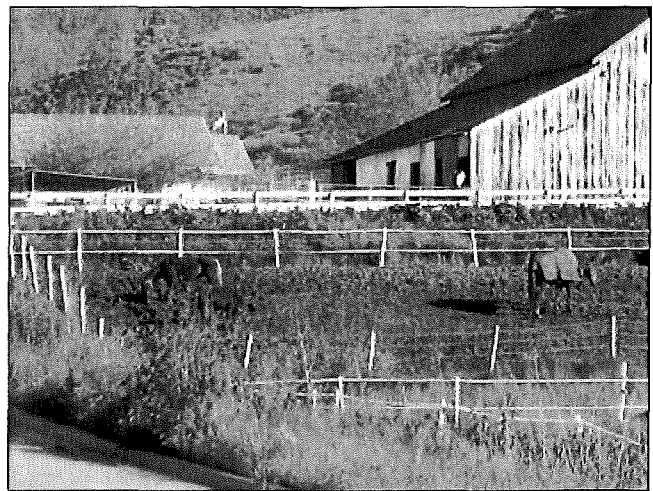
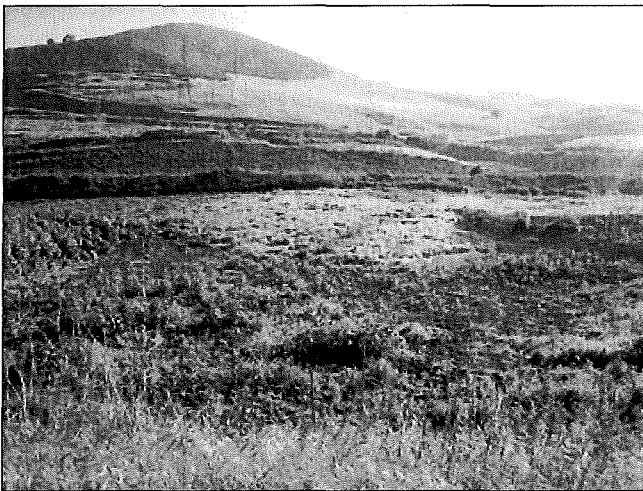
**Aerial Map of UGB06-001 & GP06-06-02**



The vicinity of the site is primarily characterized by undeveloped grasslands and horse pastures. To the north are large-lot single-family homes and an assortment of horse stables and out-buildings. To the east of the site is the Evergreen Canal, an abandoned man-made channel that once conveyed water from Coyote Creek to Thompson Creek and Silver Creek. The canal marks the location of the fifteen percent slope line, and uphill to the east are grasslands and hilly terrain. Across Piercy Road to the west are undeveloped lands designated for Industrial Park uses in the Edenvale Redevelopment Project area, and to the south are undeveloped lands designated Medium Low Density Residential (8 DU/AC) in the General Plan and approved for single-family residential development at a density of 4.8 dwelling units per acre. Further south on Basking Ridge Avenue is an existing single-family residential development designated Medium Density Residential (8-16 DU/AC) and developed at eight dwelling units per acre. All parcels adjacent to the site, with the exception of the hillsides to the east, are located within the UGB and USA. The UGB was modified to include the adjacent site to the south for residential development in 2006.

The subject site is designated Rural Residential (0.2 DU/AC) and is intended for single-family development on lots at least five acres in size. This land use designation is considered non-urban in the General Plan (urban development is defined as a minimum of one dwelling unit per acre). Non-urban land uses are specifically applied to foothill areas to avoid issues associated with development in areas subject to potential geologic hazards. The existing General Plan land use designation on the site is consistent with the General Plan Major Strategies, Goals, and Policies that support non-urban uses at the urban fringe, outside of the UGB and USA. The existing residential General Plan land use designations in the project vicinity also are intended for low intensity development: existing and approved single-family residential development to the south is between 4.8 to eight dwelling units per acre.

#### **Photos of the Vicinity of the Site and Adjacent Horse Stable**



#### **PROJECT DESCRIPTION**

The applicant, Barbaccia Investments, request a minor modification to the Greenline/Urban Growth Boundary (File No. UGB06-001) to include 3.2 acres of unincorporated territory located at the northeasterly quadrant of Piercy Road and Silicon Valley Road. The proposal includes a concurrent General Plan Land Use/Transportation Diagram amendment request (File No. GP06-02-02) to change the land use designation from Rural Residential (0.2 DU/AC) to High Density Residential (25-50 DU/AC) and to expand the Urban Service Area boundary to include the subject 3.2-acre site.

The realignment of the USA and UGB boundaries allows urban development to occur on the site and establishes the site's eligibility to receive City services. The proposed land use designation of High Density Residential (25-50 DU/AC) facilitates future development of three-to four-story apartments and

condominiums on the site ranging from approximately 64 to 128 dwelling units. (A 3.2-acre site developed under the High Density Residential (25-50 DU/AC) land use designation would normally yield 80 to 160 dwelling units, but geologic constraints on the site reduce the area suitable for residential development to 2.56 acres. These geologic constraints are discussed in the Analysis section of this staff report.)

Approval of the Greenline/Urban Growth Boundary modification and the General Plan amendment allow the applicants to pursue a residential development project through subsequent steps that could include: 1) Planned Development (PD) pre-zoning; 2) City Council petition to the County Local Agency Formation Commission (LAFCO) for approval of the Urban Service Area expansion and approval of annexation to the City; 3) Planned Development Permit; and 4) subdivision maps.

### **Greenline/Urban Growth Boundary (UGB)**

The UGB defines the ultimate limit of urbanization by setting clear and definable limits to urban development both intended and anticipated in the General Plan. In hillside locations, the policies of the San José 2020 General Plan specify that the UGB should extend along an alignment, which is generally coterminous with the alignment of the USA boundary. General Plan policies require that both the UGB and USA follow the course of the fifteen percent slope line. The intent of the fifteen percent slope line is to provide a clear and definite limit for urban development at the base of the hillsides that ring the valley floor. The subject site slopes uphill from the Piercy Road frontage to the Evergreen Canal, after which the terrain experiences slopes greater than 15%; thus, the eastern edge of the canal defines the 15% slope line for the subject site.

### **Urban Service Area Boundary Expansion**

The Urban Service Area Boundary (USA) directs urban development to those areas where municipal services and facilities can be provided in an efficient and orderly manner. The General Plan specifies that areas above the fifteen percent slope line should remain outside of the USA. Per the General Plan, no expansion of the USA is permitted outside of the UGB. These policies together govern the timing and location of future development and the extension of urban services; they ensure that development occurs in a clear and logical manner and that the City can provide adequate services to its residents and businesses. LAFCO is the decision-making body for USA boundary expansion requests.

## **ANALYSIS**

### **Minor Modification to Greenline/Urban Growth Boundary (UGB)**

Title 18 of the San José Municipal Code provides criteria for considering modifications to the UGB (see Attachment 4). There are two types of modifications to the UGB: major modifications and minor modifications. Major modifications involve modifying the UGB to include areas of five acres or more and may only be considered as part of a comprehensive update to the General Plan. Requests that qualify as minor modifications are considered by the City Council during the General Plan amendment process.

To be considered a minor modification, the subject proposal must meet the criteria in Sections 18.30.220(A) as follows:

18.30.220(A). *Subject to the limitations of subsections B., C., and D. below, Lands proposed for inclusion within the UGB must be:*

1. *No larger than five acres in size unless the proposal would further the goals of the UGB by creating a permanent open space buffer or other clear limit to future urban development in the vicinity; and*
2. *Located below the fifteen percent slope line, as defined in the general plan; and*
3. *Be contiguous to lands with an urban land use designation on the city's general plan land use/ transportation diagram.*

Based upon an interpretation of the criteria, the Planning Director determined that this proposal could qualify as a minor modification of the UGB (see Attachment 3). The area proposed for inclusion into the UGB is less than five acres in size, located below the fifteen percent slope line, and is contiguous to lands with an urban land use designation (defined as one dwelling unit or greater in the General Plan), and would require urban services to serve the subject site. Staff is recommending approval of the proposed modification of the UGB to include the subject 3.2-acre site based on this interpretation of the Municipal Code.

### **Inconsistency with the General Plan Growth Management Major Strategy**

The efficient use of land, infrastructure, and urban services is becoming increasingly important as the City matures and vacant land is absorbed by urban development. The General Plan Growth Management Major Strategy encourages efficient use of lands for housing, directing more intensive residential development to key locations including the Downtown and Transit-Oriented Development Corridors, where City services are already in place.

Per the General Plan, the High Density Residential (25-50 DU/AC) land use designation requested by the applicant is intended for the Downtown Core Area, near commercial centers with ready access to freeways and in the vicinity of rail stations within Transit-Oriented Development Corridors. The subject site is located on the edge of the City outside of the UGB/USA, and therefore the requested land use designation is inconsistent with the General Plan. Furthermore, future high-density development on the site may require the extension/upgrading of public infrastructure to serve the site. Therefore, the proposal does not further the Growth Management Major Strategy principle of maximizing existing resources to reduce costs of providing services.

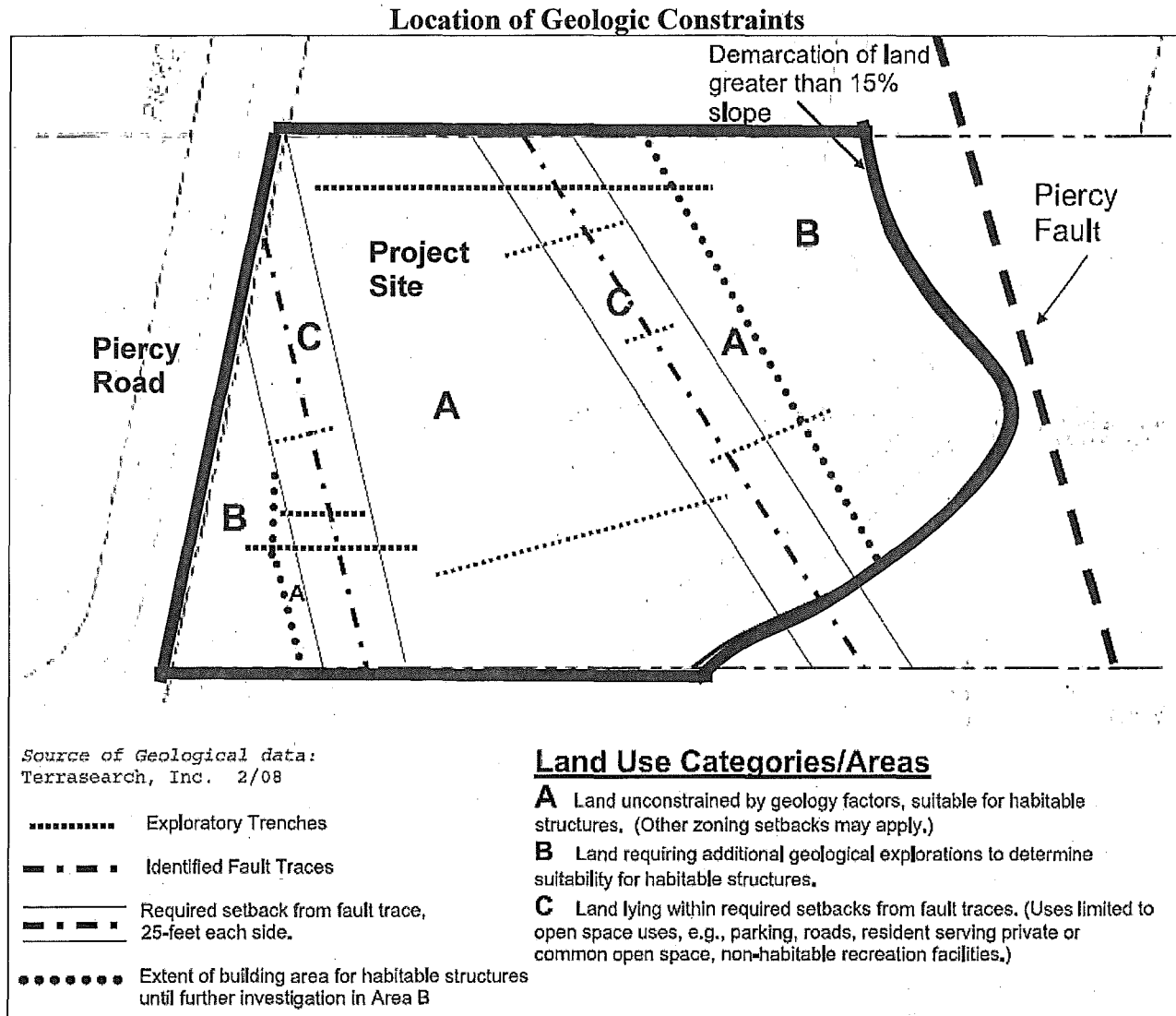
### **Non-conformance with General Plan Policies**

*Urban Service Area Policy No. 2* recognizes that the Urban Service Area should be expanded only when it can be demonstrated that existing services and facilities are available and adequate to serve the proposed expansion area. While utility service capacity may be available to serve future urban development on the site, it requires the construction of new sewer mains and upsizing of the existing mains in the vicinity. Moreover, the public infrastructure in the immediate area is financed through an Assessment District in the Edenvale Redevelopment Project Area that was not intended to provide capacity for development on sites outside of the UGB/USA. Future development on the site would be responsible for constructing all necessary on-site and off-site infrastructure improvements.

San José has been a leader in providing housing, and additional housing capacity in the San José 2020 General Plan is available for over 60,000 new dwelling units. The capacity of new residential development primarily exists in the Downtown, near planned transit stations and job centers, and in areas where neighborhood services such as parks and schools are readily available. The Urban Service Area and Urban Growth Boundary policies seek to avoid extending infrastructure to serve a site located on the urban fringe when sufficient housing opportunity sites are available in urbanized areas. Therefore, the proposal is substantially inconsistent with the General Plan.



*Hillside Development Policy No. 3* states that hillside residential development (one dwelling unit per acre or greater) may occur only where adequate services and facilities can be feasibly provided and where environmental hazards can be reasonably avoided. Geotechnical investigations conducted in February 2008 found two fault traces traversing the center of site. The identification of fault traces on the site effectively reduces the area developable with habitable structures, as minimum 25-foot setbacks are required from habitable structures and the location of the fault traces. Per the City Geologist, other areas of the site, along the Evergreen Canal, and portions along Piercy Road, also have the potential for fault traces, and additional geotechnical studies would be required prior to approval of any future development on the site. Based on staff's knowledge of the geologic constraints hazards found on the site, the proposal for high-density residential uses on the site is inconsistent with this Hillside Development Policy.



*Soils and Geologic Hazards Policy No.2* also specifies that the City should not locate public improvements and utilities in areas with identified soils or geologic hazards to avoid extraordinary maintenance and operating expenses. Future development on the site would be subject to a Geologic Hazard Clearance to demonstrate that potential hazard impacts to residences and public infrastructure can be mitigated to an acceptable level. However, future development on the site would be constrained by the identified fault traces on the site.

*Earthquake Policy No. 3* states that the City should only approve new development in areas of identified seismic hazard if such hazard can be adequately mitigated. The environmental Initial Study prepared for this proposal concluded that implementation of General Plan policies and specific mitigation measures required as part of a future development project would reduce geologic impacts to a less than significant level per purposes of the California Environmental Quality Act (CEQA). However, allowing development to occur in areas of identified seismic hazards when areas more suitable for residential development is available in the city is contrary to the fundamental policies in the General Plan concerning the appropriate locations for urban development.

### **Land Use Compatibility**

The proposed density range of 25 to 50 dwelling units per acre is incompatible with nearby single-family residences. The Medium Low Density Residential (8 DU/AC) designation applied immediately to the south is typified by lots of 6,000 square feet in size or greater. The lower density provided by this land use designation allows development designed to address geologic constraints in a manner that is consistent with the City's Residential Design Guidelines in avoiding retaining walls and flat plane slopes. Development on the site at the proposed High Density Residential (25-50 DU/AC) land use designation would represent an abrupt transition between future development and the single-family residential uses, and could result in design features that are incompatible with the Residential Design Guidelines given the geologic constraints found on the site.

### **Conclusion**

Urban development on the site under the proposed High Density Residential (25-50 DU/AC) land use designation is incompatible with the character of the immediate surroundings. Furthermore, development on the site would subject future residents to potential geologic hazards found on the site. While such hazards would be required to be fully mitigated prior to development on the site, the fundamental question remains whether the timing of development is appropriate on a site located outside of the UGB/USA with geologic constraints given that the sufficient residential capacity exists in other areas more suitable for housing.

Staff has determined that the proposal conforms to the criteria of a minor modification as outlined in Title 18, and staff is recommending approval of File No. UGB06-001. The intent of the UGB is to delineate the ultimate limit of urbanization and to encourage compact, efficient infill development while discouraging more costly development at the edge of the city. The General Plan Growth Management Major Strategy and goals and policies also call for locating new development in infill areas to maximize efficiency in existing public services. Extending the USA to include the site would be contradictory to these goals. The proposal for development under the High Density Residential (25-50 dwelling units per acre) land use designation is inconsistent with the overall General Plan goals and policies. Therefore, staff recommends denial of the General Plan amendment and denial of the proposed expansion of the USA.

### **ENVIRONMENTAL REVIEW**

A Draft Negative Declaration was circulated for public review on April 1, 2008. Staff anticipates the Negative Declaration will be adopted on April 21, 2008.

## PUBLIC OUTREACH/INTEREST

- ☐ **Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- ☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, staff followed the Council Public Outreach Policy. A community meeting was held in the project vicinity on March 10, 2008, and three residents from the nearby single-family neighborhood were present. They expressed concerns over the proposed density range of 25 to 50 dwelling units per acre and the potential for future traffic impacts to their neighborhood. Planning staff has been available to answer questions from the public.

A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the site. The public hearing notice was also posted on the City's website. This staff report is also posted on the City's website. In addition, the Notice of the Spring 2008 hearings on the General Plan was published in the San José Post-Record. A description of the proposed General Plan amendment/text amendment was posted on the Planning Division web page. The draft amendment was presented at the Neighborhood Roundtable on February 12, 2008 and at the Developers Roundtable on February 15, 2008 for review and comment. The draft amendment was also presented at the Housing and Community Development Commission meeting on April 10, 2008, and the Commission recommended denial of both the subject UGB minor modification and the General Plan amendment/USA expansion.

No comments were received by the public regarding the proposed amendment. Staff has been available to respond to questions from the public.

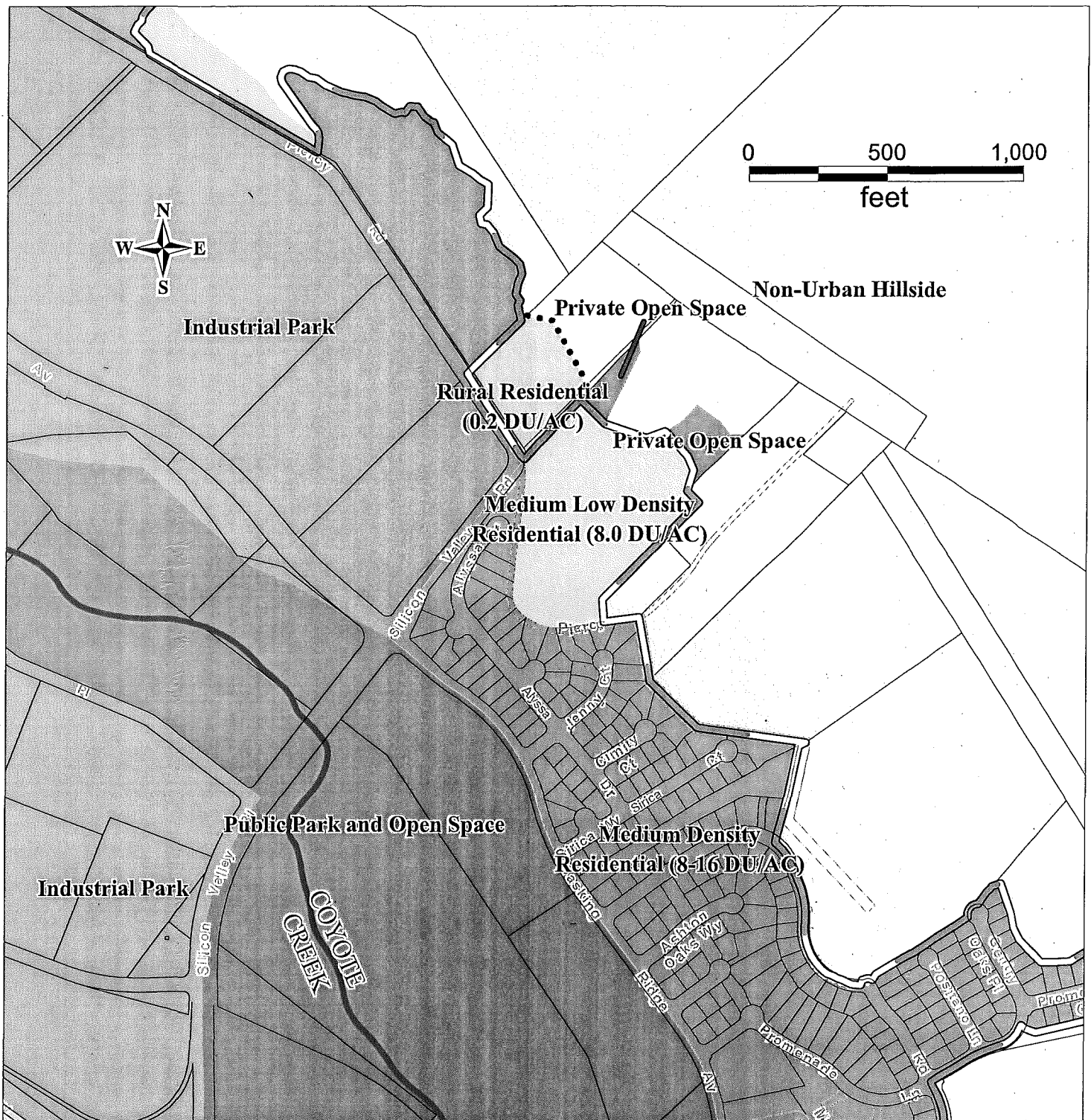
**Project Manager:** Allen Tai

**Approved by:** Andrew C. Btree **Date:** 04/14/2008

Owner/Applicant:	Attachments:
Owner and Applicant:  Barbaccia Investments 950 South Bascom Avenue San José, CA 95128	<ol style="list-style-type: none"><li>1. Map of existing and proposed General Plan land use designations</li><li>2. Map of current zoning districts</li><li>3. Director of Planning's Minor Modification Determination</li><li>4. San José Municipal Code Chapter 18.30 – Greenline/Urban Growth Boundary</li><li>5. Draft Negative Declaration</li><li>6. Correspondence from City departments, commissions, and other local and federal agencies</li><li>7. Public Correspondence</li></ol>

# UGB06-001 & GP06-02-02

## Location Map with General Plan

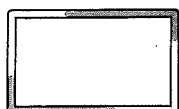


Prepared by the Department of Planning, Building, and Code Enforcement  
City of San Jose, California

Joseph Horwedel, Director



### Proposed Expansion Area for USA and UGB



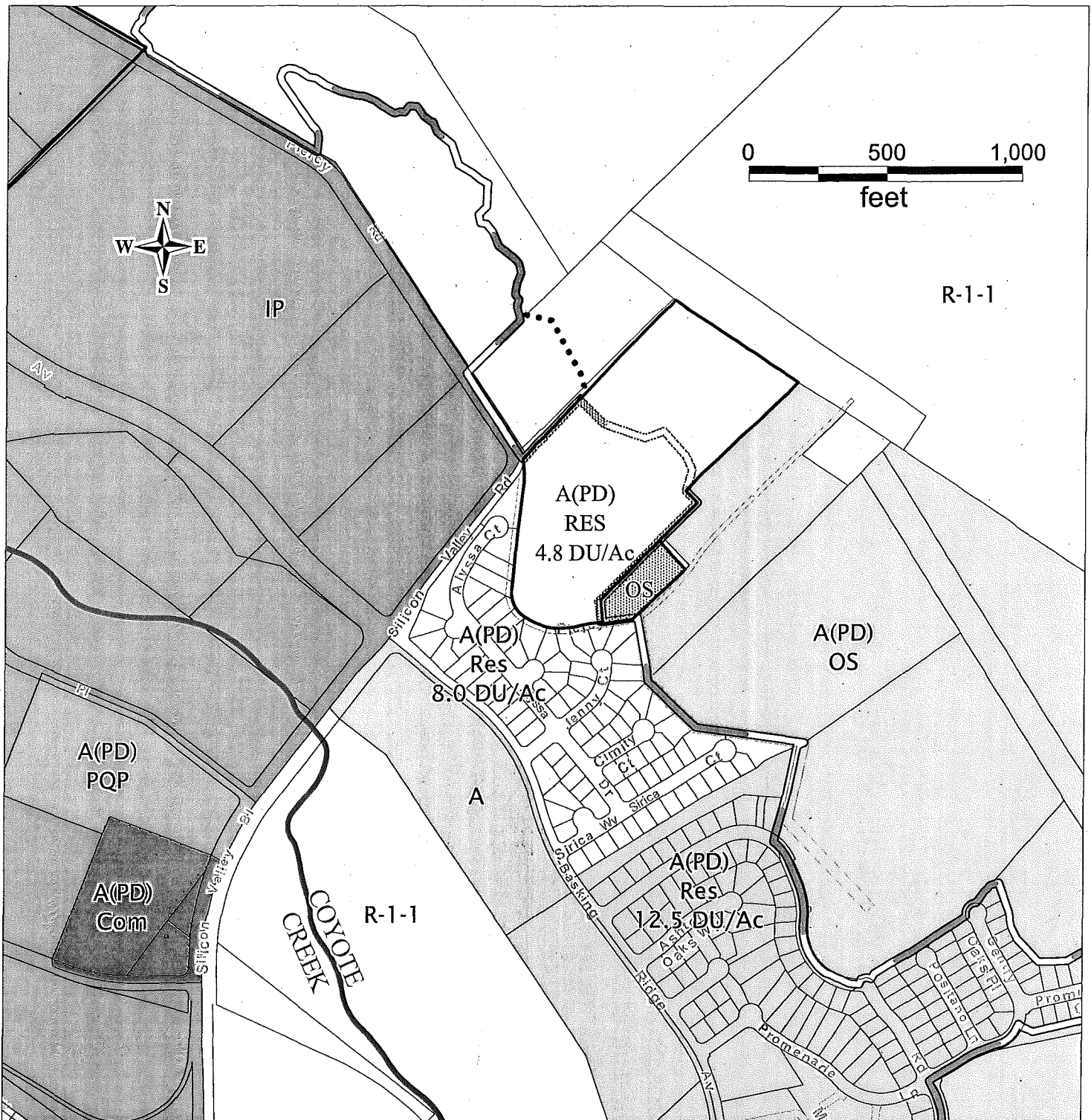
## Existing Urban Service Area and Urban Growth Boundary

District: 2  
Quad: 130



# UGB06-001 & GP06-02-02

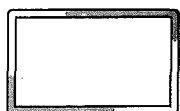
## Location Map with Zoning



Prepared by the Department of Planning, Building, and Code Enforcement  
City of San Jose, California  
Joseph Horwadel, Director



Proposed Expansion Area  
for USA and UGB



Existing Urban Service Area and  
Urban Growth Boundary

District: 2  
Quad: 130

Map Created On:  
4/11/2008



Norman E. Matteoni

Peggy M. O'Laughlin

Bradley M. Matteoni

Baron G. Hechtman

Gerry Houlihan

April 26, 2016

Hon. Chair and City Planning Commission  
c/o Office of the City Clerk  
City of San Jose  
200 E. Santa Clara Street  
San Jose, CA 95113

**RE: Piercy Road General Plan Amendment (GP15-017)  
Application**

Dear Chair and Members of the Commission:

Staff is recommending an early denial on the above General Plan Amendment request.

Our differences with Staff appear to be first, the interpretation of the General Plan's Urban Service Area (USA) policies and second, consideration of the appropriate land use of the Piercy parcel. Summarized below are the bases for our case, for which we ask you to allow us to proceed with full review.

**REASONS FOR COMPLETE REVIEW**

Unlike the staff we believe our request for inclusion of the CGB Piercy Road property in the USA accurately represents the intent of the General Plan. The Plan sets a number of policies addressing the use of the Urban Growth Boundary and Urban Service Area and relationship thereof.

First, several of the Plan policies cited below call for the UGB and USA to be conterminous in particular in regards to land greater than 15% slope and with the exception of Urban Reserve designated land,



848 The Alameda  
San Jose, CA 95126  
ph. 408.293.4300  
fax. 408.293.4004  
[www.matteoni.com](http://www.matteoni.com)

policies that clearly support CGB's request for inclusion in the USA. That reconciliation was done for a parcel on Quimby Road, 440 feet east of Murillo Road, in 2013.

- Chapter 6 – Land Use and Transportation, page 6. *The Greenline/Urban Growth Boundary is indicated on the Land Use/Transportation Diagram and is typically conterminous with the Urban Service Area and the 15 percent slope except in areas of the Urban Reserve.*
- Further support of CGB's request is provided in Chapter 2 – Thriving Community and Chapter 5 – Interconnected City and which addresses the conterminous intent of UGB and USA and related availability of urban services.
- Chapter 2 – Thriving Community. Page 18. *FS-3.11 Consider annexation of territory outside the Urban Service Area only if it is within the Urban Growth Boundary, its intended use will require minimal or no use of Municipal services ...*
- Chapter 5 – Interconnected City, page 20. *San Jose's Urban Service Area boundary defines the areas where services and facilities provided by the City and other public agencies are generally available, and where urban development requiring such services should be located. In many locations, the Urban Service Area boundary and the Urban Growth Boundary are conterminous" a notable exception is that Urban Reserves are located outside the Urban Service Area.*
- Additionally in Chapter 6 – Land use and Transportation policy *LU-19.6 Use the Urban Service Area (USA) boundary to preserve the non-urban character of development on lands outside the Urban Growth Boundary* clearly indicates the intent of the USA is to distinguish between land to be used for urban purposes from land intended to remain non-urban. Given that CGB's property is included within the UGB and in a prior its inclusion in the USA is fully in compliance with the intent of the General Plan.

A review of the Plan's Land Use and Transportation Diagram also reveals the uniqueness of the Plan's **singling out the CGB property for exclusion from the USA.** (See Exhibits 1 – 3 hereto.)



Incidentally, the 15% line was historically set along the now-abandoned Santa Clara County Water District canal. The parcel to the southeast, developed by KB Homes, established that the 15% slope line extended above the canal. This request only involves the portion of the Barbaccia parcel below the former canal.

The case for inclusion of the CGB property within the USA is further supported by review of the Land Use and Transportation Diagram mapping of the USA. As noted earlier, exceptions to conterminous UGB and USA applies to urban reserve lands. In our review of the Land Use/Transportation Diagram we have only been able to detect for four minor derivations including that of the CGB property. Two of these exceptions are properties with land use designation of Park, Open Space and Habit. One, lying immediately north of State Street and west of Spreckles Ave., appears to consist of marshlands. The other, located immediately east of Murillo Ave. in the vicinity of Quimby Road, is a ponding area that probably serves as a stormwater retention facility. The third and larger area lies east of Ruby Road in the vicinity of Mt Pleasant Road. This site is partially developed and also lying within the UGB is designated in the Plan's land use map as a combination of Rural Residential. In other words two of USA excluded sites are subject to inundation and the other improperly included within the UGB. In contrast, the Piercy Road site which is unconstrained by existing natural resources features, free of slopes over 15 percent and with adequate public facilities and services is singled out and designated Lower Hillside.

Given the Piercy Road property consistency with General Plan's UGB and USA policies and the arbitrary or unintended exclusion of the site in the Plan's Land Use/Transportation Diagram, correction of USA boundary by administrative action is appropriate.

The other outstanding issue discussed in our meeting with Staff is what is the appropriate land use. It is apparent from our discussions staff considers the present **Lower Hillside designation as an interim designation** to allow for further consideration of appropriate use. Given staff's discussion it also appears the likely preference is for industrial use. Staff made an argument that residential use of the site would violate Plan policies emphasizing the directing of residential growth to designated growth areas. The Plan, however, distinguishes between "significant" and "infill" development in the **Residential Neighborhood land use designation** requested by CGB. Given the immediate adjacency to an existing single-family neighborhood, limited development scale (16 single-family of equivalent size as the adjoining residences), separation from designated industrial land south of Piercy

Road similar to that of the existing residences fronting on Tennant Road we believe residential rather than industrial use would be suitable use of the Piercy Road land.

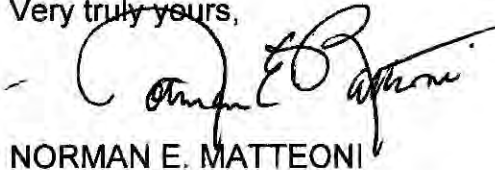
The enclosed maps, showing the USA looping around this parcel, is telling. The residential property to the southwest was placed within the USA in and around 2006 and developed with single family residences; the adjacent undeveloped property to the northwest on Piercy was included within the USA several years ago part of a general plan amendment designating it industrial. Moreover, when you view Exhibit 4, the map showing a fault line cutting through the adjacent northwestern parcel, you can see that parcel will have a severe constraint to develop any significant industrial use. As you go further north along Piercy Road, the 15% slope line is virtually coterminous with the eastern edge of the road.

#### CONCLUSION

In summary, the requested land use reclassification would remove the discretionary Lower Hillside designation and replace it with a residential land use designation compatible with the adjoining neighborhood.

Thus, we ask that the GP amendment request proceed to full review and hearing.

Very truly yours,

A handwritten signature in black ink, appearing to read "Norman E. Matteoni", is written over the typed name.

NORMAN E. MATTEONI

NEM/jm  
Enclosure

cc: Jason Rogers  
Tom Cooke  
Bryan Kientz





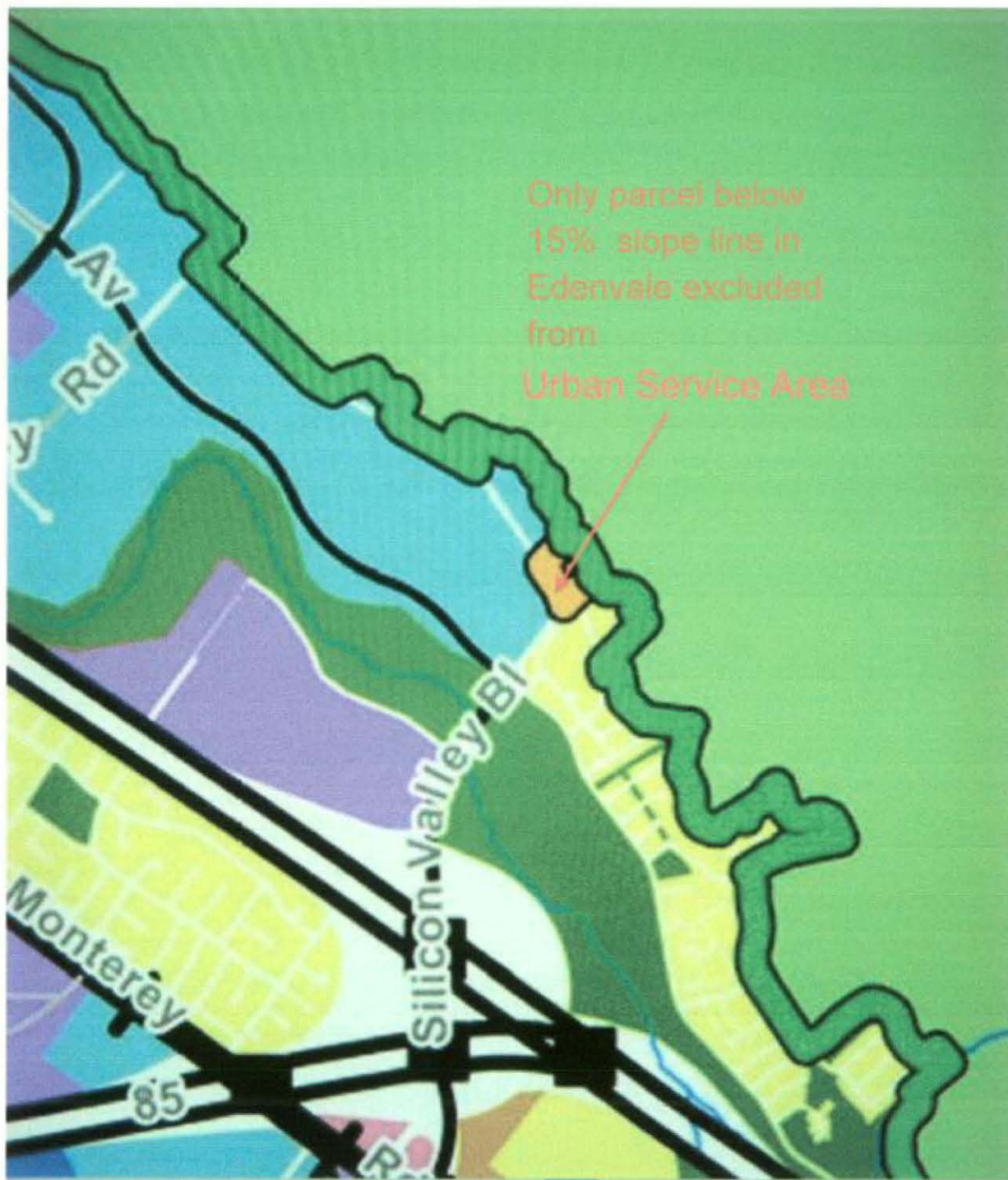
Exhibit 1. Application Summary



Excerpt from 2040 GP Map

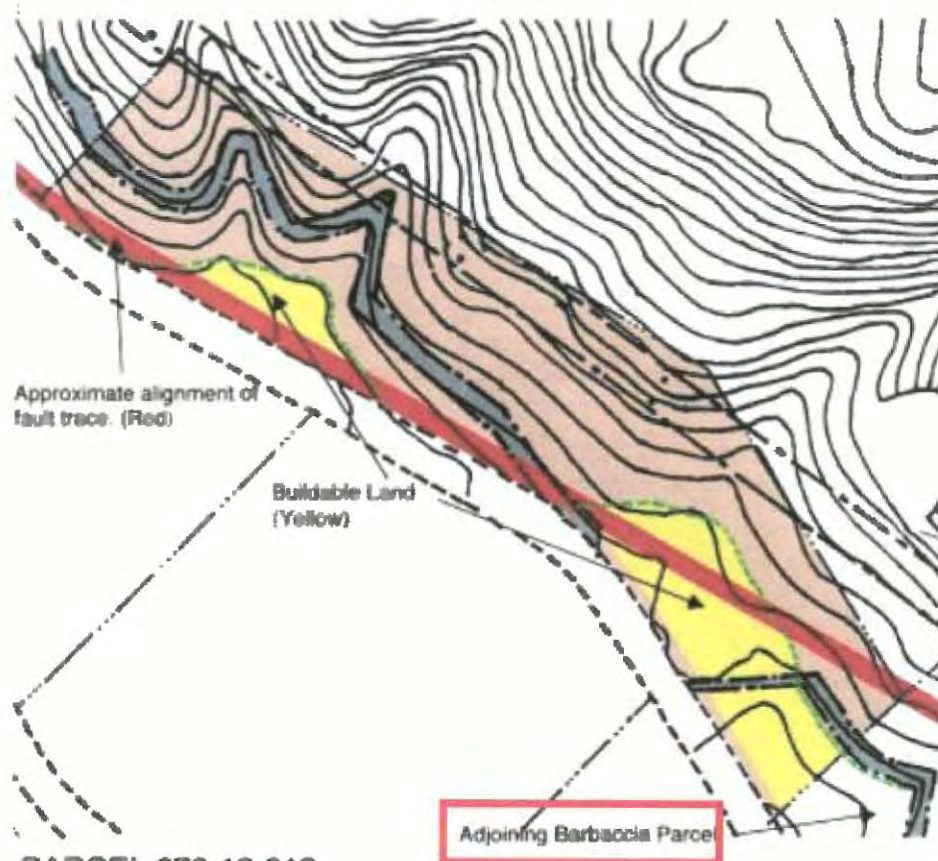
Exhibit 2





Bright Green Line = USA

Exhibit 3



# **PARCEL 678-13-013**

Parcel unincorporated but within city designated urban growth/urban service area

*Total Acres:* 32.17

*Developable Acres:* 6.8 approximate

*Current GP Designation:* Industrial for developable portion, i.e. slope of 15 percent or less and non-urban hillside for portion with slopes in excess of 15 percent.